



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2018-0369; FRL-9992-18-Region 5]**

**Air Plan Approval; Ohio; Ohio Less Than 10 TPY BAT Exemption**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving, under the Clean Air Act (CAA), revisions to Ohio's State Implementation Plan (SIP) as requested by the Ohio Environmental Protection Agency (OEPA) on May 22, 2018. The revisions to Ohio's SIP exempt sources that emit less than 10 tons per year (tpy) of each criteria pollutant from the need to employ Best Available Technology (BAT).

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0369. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either through [www.regulations.gov](http://www.regulations.gov) or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Richard Angelbeck, Environmental Scientist, at (312) 886-9698 before visiting the Region 5 office.

**FOR FURTHER INFORMATION CONTACT:** Richard Angelbeck, Environmental Scientist, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-9698, [angelbeck.richard@epa.gov](mailto:angelbeck.richard@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What is EPA's response to the comments?
- III. What Action is EPA taking?
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

## **I. Background**

On May 22, 2018, OEPA submitted a SIP revision to Ohio Administrative Code (OAC) rule 3745-31-05(A)(3)(a)(ii). This

revision exempts the smaller emitting sources, those that emit less than 10 tpy of each criteria pollutant, from the need to employ BAT. OEPA's less than 10 tpy BAT exemption is in OAC 3745-31-05(A)(3)(a)(ii) and reads: *"BAT is not required if the air contaminant source was installed or modified on or after August 3, 2006 and has the potential to emit (PTE), taking into account air pollution controls installed on the source, less than ten tons per year of emissions of an air contaminant or precursor of an air contaminant for which a national ambient air quality standard has been adopted under the Clean Air Act."*

On August 3, 2006, the Ohio General Assembly passed Senate Bill 265 (SB 265) which required OEPA to modify several of its BAT rules. One of the changes implemented was the less than 10 tpy BAT exemption. To implement the SB 265 changes, OEPA adopted revisions under OAC Chapter 3745-31-05(A)(3)(b) on November 20, 2006, and then moved the language in OAC rule 3745-31-05 from paragraph (A)(3)(b) to (A)(3)(a)(ii) on June 30, 2008. The rule language contained in OAC rule 3745-31-05(A)(3)(a)(ii) was carried over in OAC rule 3745-31-05, which was adopted on April 20, 2016 and is what EPA is now approving as a revision to its SIP. On January 18, 2008, OEPA requested that EPA approve this rule language as a revision to Ohio's SIP. EPA responded with a June 5, 2008 letter to OEPA indicating that the request was incomplete due to a lack of a CAA section 110(l)

demonstration, thus returning the request back to OEPA.

OEPA's May 22, 2018 SIP revision submittal included the analysis required by section 110(l) of the CAA. This demonstration included an extensive quantitative and qualitative analysis to show the impact that the less than 10 tpy BAT exemption would have on emissions. OEPA's 110(l) analysis demonstrated that the air quality will not be negatively impacted due to the small increase in emissions as result of the less than 10 tpy BAT exemption. On November 14, 2018 (83 FR 56775), EPA published a proposed approval of the rule revision included in the May 22, 2018 submittal from OEPA. The specific details of OEPA's May 22, 2018 SIP submittal and the rationale for EPA's approval were discussed in the November 14, 2018 notice of proposed rulemaking (NPRM).

## **II. What is EPA's response to the comments?**

EPA received three comments on the November 14, 2018 NPRM. The first two comments were in support of the proposed approval of OEPA's BAT exemption for the less than 10 tpy sources and were from the Ohio Chemistry Technology Council and the Ohio Chamber of Commerce, as well as American Municipal Power, Inc. and the Ohio Municipal Electric Association. The third comment was anonymous, and it expressed concern that the exemption was unnecessary and instead of exempting the smaller sources completely from the CAA and from requiring BAT, OEPA could

provide different ways to reduce emissions from the smaller sources because they still emit pollutants. The comment did not indicate suggested ways to accomplish this goal.

*EPA Response:* The CAA does not require BAT for minor sources. It does, however, require a states' minor NSR permit program to ensure that construction or modification of new sources will not interfere with attaining or maintaining the national ambient air quality standards (NAAQS). See CAA section 110 (a) (2) (C) and 40 CFR 51.160(a). The CAA also ensures that SIP revisions such as this will not interfere with attainment or maintenance of the NAAQS. See CAA section 110(1). OEPA submitted a 110(1) analysis to demonstrate that these requirements are met. For sources that are constructed or modified after this SIP revision takes effect, OEPA relies on OAC 3745-31-05(A) (1) to ensure that construction or modification of new sources will not interfere with attaining or maintaining the NAAQS. For existing sources, OEPA submitted a technical analysis, discussed in the NPRM (83 FR 56775), demonstrating that the air quality will not be negatively impacted due to the small increase in emissions from existing sources as result of the less than 10 tpy BAT exemption. The 110(1) analysis estimated an increase of 23.53 tpy of volatile organic compound (VOC) emissions in Ohio ozone nonattainment areas resulting from the rule revisions, and OEPA opted to use emissions credits to

mitigate any possibility of adverse air quality impact that may result from this increase in VOC emissions. These emissions credits reflect emissions reductions from permanently shut down emissions units in the Cleveland and Cincinnati areas in Ohio. The reductions are creditable because they are surplus, quantifiable, permanent and federally enforceable. OEPA has entered the 23.53 tpy of VOC emission credits in its "tracking 110(1) permanent retirement and SIP credits used" database that it uses to track retired emissions used as emissions credits for offset purposes.

### **III. What Action is EPA Taking?**

EPA is approving the OEPA May 22, 2018 SIP revision submittal for OAC 3745-31-05(A)(3)(a)(ii) that exempts the smaller sources, those that emit less than 10 tpy of each criteria pollutant, from the need to employ BAT. Ohio provided a section 110(1) demonstration with the SIP revision request. In order to offset potential increases in VOC emissions due to the less than 10 tpy BAT exemption, the demonstration uses 23.53 tpy of VOC emission credits from emission units at industrial facilities that have shut down, or permanently reduced emissions, in the Cleveland and Cincinnati areas. The emissions credits are: 4.88 tpy of VOC emissions credits from the permanently shut down emission unit R010 (permanently shut down on 7/16/2014) at the RMC USA Inc. facility (Facility ID

0204000423) in Ashtabula County, which is the Cleveland, Ohio area; and 18.65 tpy of VOC emissions from the permanently shut down emission unit P001 (permanently shut down on 11/21/2014) at the Rock-Tenn Converting Co. facility (Facility ID 1431070952) in Hamilton County, which is the Cincinnati, Ohio area. The emissions credits have already been retired. Upon approval of this SIP revision, OEPA will make final in its database the designation of these permanent retirements as offsets for this rule revision and EPA bases our approval on this retirement and designation.

EPA finds that Ohio's exemption of the less than 10 tpy sources from the need to employ BAT is consistent with Federal requirements and is approving the rule revision as a component of the Ohio SIP because, as discussed above, EPA has found that the less than 10 tpy BAT exemption does not interfere with attainment or maintenance of any of the NAAQS and would not interfere with any other applicable requirements of the CAA, and thus, along with the permanent retirement of the emissions credits, is approvable under CAA section 110(1).

#### **IV. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Ohio Regulations described in the amendments

to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available through [www.regulations.gov](http://www.regulations.gov), and at the EPA Region 5 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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<sup>1</sup> 62 FR 27968 (May 22, 1997).



- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of

Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

## List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 26, 2019.

Cathy Stepp,  
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

### **PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. In §52.1870, the table in paragraph (c) is amended by revising the entry for “3745-31-05” to read as follows:

#### **§52.1870 Identification of plan.**

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(c) \* \* \*

#### **EPA--APPROVED OHIO REGULATIONS**

Ohio Citation	Title/Subject	Ohio effective date	EPA Approval date	Notes
* * *	* * *	* * *		

Chapter 3745-31 Permit-to-Install New Sources and Permit-to-Install and Operate Program				
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3745-31-05	Criteria for Decision by the Director	5/1/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	Except for (E)
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[FR Doc. 2019-07332 Filed: 4/11/2019 8:45 am; Publication Date: 4/12/2019]